

## A new improved role for notaries in Latvian real estate transactions?

◆ By Valters Kronbergs



Up to the present time in Latvia, the end user has had a choice on which of three potential notary services to select in a real estate transaction, whether that be 1) signature certification, 2) document preparation with signature certification, or 3) the preparation of a "notarial act," or a full blown notarial review of the transaction documents and verification of intent of the parties.

As you might expect, the fee payable is commensurate with the level of the service category. At a minimum, the parties must obtain category one service to submit a "request to register." Category 1 service has not been a bitter pill to swallow, as the cost of such certification is modest. But category 3 service, which to-date is entirely discretionary, can be quite costly, as it is typically based on a percentage of the transaction value. All is basically well with the existing notarial service category matrix, because whether the end user wants to have some basic services in category 1 or some major review of its documents under category 3 is up to the end user, not the notary.

Until now. A recent draft law reform initiative of the notary council seeks to change this by introducing the mandatory provision of category 3 notarial services in real estate transactions for individuals. The notary council reportedly says it is in response to the public policy need to minimize fraud in real estate transactions.

Today, apparently only 10 percent of the parties to a real estate transaction request a notarial act from a notary. Many sellers do not order such service. It is thought that such a service will help minimize fraud. And it is the special needs of these helpless sellers which are thought to justify overriding the discretion of the individual parties to a transaction as to whether or not they should engage the services of a notary in the preparation of a notarial act (under category 3).

While the draft law has not yet received first reading, it may not be far off, and it has already made its way to the Ministry of Justice.

On one view, the expansion of mandatory notarial services is in keeping with the German tradition of a more all-encompassing role for notaries in society. The argument goes roughly along the lines that, "if it is good for Germany, why is it not good for Latvia?"

On another view, this effort raises a number of questions and concerns. To begin with, on a practical level, it almost certainly means increased real estate transaction costs, both in actual monetary terms as well as in the likely lengthening of the bureaucratic process leading to the con-

veyance of title. In a worst case scenario, it may even perform a deal-breaking function, as any factor lengthening the process of conveyancing stands to do.

Secondly, on a public policy level, it serves to remind us that one of the things that is still missing in Latvia is a structured approach to law reform. Such an approach would call for a preliminary study of a perceived societal problem (such as irregularities in real estate transactions), and such a study would presumably consider all aspects of a problem, various alternative solutions, an evaluation of such possible solutions and their impact and proportionality, and perhaps, after widespread public participatory discussion of the desired outcome, a conclusion as to the need for legislative reform of a certain type.

In this particular case, we see a specific solution being advanced without any broad public discussion of the various alternatives to rectification of such problem.

Thirdly, it takes a rather dim view of the capacities of the individual in Latvian society in deference to an approach maximizing state intervention in the affairs of the individual. It treats all individuals as incapable of judging the soundness of their transaction or incapable of hiring third parties of their choice to consult them on the soundness of their transaction.

Fourthly, it is not exactly certain that by performing stage 3 "notarial act" services, a notary can prevent power of attorney fraud, widely acknowledged to be the main problem in real estate transaction-related crime. This goes for misstatements of true transaction prices as well. It is not at all clear that by expanding their role in the document review process, notaries will solve these problems for individuals or for the state.

This draft law reform has not yet been submitted for first reading, but there is a sense that it is not far off. As this is a fairly major step in the real estate sector, it is hoped that if the draft legislation is advanced through the Saeima (Latvia's parliament), a healthy debate emerges as to the proportionality of the proposed solution to the perceived problem it is setting out to cure.

Yes, notaries frequently perform a valuable service to individuals and society, but the extent to which and the manner in which their services are required is a matter probably best left to the potential notary service users themselves.

*Valters Kronbergs is managing partner of Kronbergs and Cukste, a member of Baltic Legal Solutions, a pan-Baltic integrated legal network of law firms which includes Teder Glikman & Partnerid in Estonia and Jurevicius, Bakijunas & Bartkus in Lithuania, dedicated to providing a quality 'one-stop shop' approach to clients' needs in the Baltics.*